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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,995	07/09/2001	Didier Branellec	ST98032	1245
5487	7590	06/09/2004	EXAMINER	
ROSS J. OEHLER AVENTIS PHARMACEUTICALS INC. ROUTE 202-206 MAIL CODE: D303A BRIDGEWATER, NJ 08807			MARVICH, MARIA	
			ART UNIT	PAPER NUMBER
			1636	
DATE MAILED: 06/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/787,995	Applicant(s) BRANELLEC ET AL.	
	Examiner Maria B Marvich, PhD	Art Unit 1636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-16 and 19-23

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


GERRY LEFFERS
 PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicants traverse the finality of the Office action mailed 2/13/04 in the amendment filed 5/13/04. Applicants argue that the diagrams labeled pASN286-56 and pASN286-56GB that were attached to the office action contain no data of the origin, date of publication or prior art status of either of the diagrams. Furthermore, applicants cannot read certain parts of the plasmid maps. The rejection, therefore, relies upon newly cited prior art that was not properly identified in, or transmitted with, the final Office Action. Accordingly, applicants could not reply meaningfully to the arguments. Most importantly, applicants were offered no opportunity to evaluate the Office Action's essential implications that these plasmids maps somehow display what one of skill in the art would have been able to determine about the plasmids.

Applicants' arguments filed 5/13/04 have been fully considered but they are not persuasive. The diagram, pASN286-56, is the map of the plasmid described in Antelman et al in the Non-Final Rejection mailed 1/2/03, 7/29/03 and in the Final Rejection mailed 2/13/04. While Antelman et al described the human smooth actin promoter simply as following the enhancer, it was clear from a reading of the passage that the promoter/enhancer were designed to express the 286-56 cassette and as such were next to one another. However, applicants stated in the amendment filed 11/24/03 that the description was inadequate and specifically that "Antelman contains insufficient information on the synthesis of the plasmid pASN286-56 to enable one of skill in the art to determine the sequence of the plasmid in general or the sequence or size of the space between the enhancer and the promoter." Therefore, the map corresponding to the plasmid described in the Antelman reference was provided. The date of the map coincides with that of Antelman et al reference. While some of the details are said to be unclear, the map clearly indicates that the E1a enhancer and the human smooth muscle alpha actin promoter are located between the EcoRI site at 2083 bp and the XbaI site at 3135. Therefore, the enhancer and promoter are clearly within 1 kb of each other.